

MUTUAL RELEASE

This Mutual Release (the “Mutual Release”) by and between Broward County, a political subdivision of the State of Florida (“County”), and the City of Lighthouse Point, Florida, a municipality of the State of Florida (“City”) (each a “Party” and collectively, the “Parties”), is entered into and effective as of the date it is fully executed by the Parties.

Recitals

A. Trio Development Corporation (“Trio”) and the City entered into a formal construction contract on or about May 12, 2017 (the “Contract”) to complete repairs to the Sample Road Bridge over the Cap Knight Bayou (the “Project”). Trio subcontracted certain work on the Project to Florida Foundation Systems, Inc. (“FFS”). On May 25, 2017, during performance on the Project, a support pile was drilled through a County-owned watermain, causing extensive damage both to the County-owned watermain and the City-owned bridge (the “Incident”).

B. The Parties desire to mutually release one another related to the Incident consistent with this Mutual Release.

NOW, THEREFORE, in consideration of the foregoing representations and mutual covenants, promises, and considerations hereinafter set forth, and with the intent to be legally bound, it is hereby agreed between the Parties as follows:

1. **Representations:** The foregoing recitals are true and correct and by this reference thereto are incorporated herein and made a part hereof.
2. **No Admission:** By entering into this Mutual Release, no Party admits fault, but rather the Parties have agreed to mutually release the other Party in the interest of avoiding the costs and uncertainty of ongoing negotiations and possible litigation.
3. **Mutual Release:** The Parties, by execution of this Mutual Release, each hereby release, waive, and discharge the other Party, including their agents, affiliates, subsidiaries, employees, officers, representatives, directors, contractors, subcontractors, vendors, laborers, suppliers, materialmen, insurers, successors and assigns, from any and all claims, demands, damages, causes of action, actions, litigation costs, including attorney’s fees, and losses of every kind and nature, whether known or unknown, arising from or relating to the Incident. The Parties further expressly covenant, promise, and agree, for themselves and their respective successors and assigns, that they shall be and are hereby forever barred and permanently enjoined from asserting any and all claims, supplemental claims, causes of action, or damages arising from or relating to the Incident. To the extent either Party damages the other Party’s property after the effective date of this Mutual Release, this paragraph shall not serve as a release of claims related to those new injuries. To the extent either Party has a prior obligation to the other Party pursuant to the Settlement Agreement between the County, the City, Foster Marine Contractors, Inc., and Communications by Poire, Inc., dated June 25, 2009 (“2009 Settlement Agreement”), this paragraph shall not serve as a release of the obligations set forth in the 2009 Settlement Agreement, including,

without limitation, the obligations of the County under Paragraph 3(B) of the 2009 Settlement Agreement, except such obligations and claims relating to the subaqueous utility line and bridge involved in the Incident are mutually released by the Parties.

No release, waiver, or discharge of any rights of the County shall be effective pursuant to this paragraph until the County is in receipt of Three Hundred Eighty-seven Thousand Five Hundred Dollars (\$387,500.00) from Trio and One Hundred Twenty-five Thousand Dollars (\$125,000.00) from FFS consistent with the Settlement Agreement entered into between Broward County, Trio, and FFS. No release, waiver or discharge of any rights of the City shall be effective pursuant to this paragraph until the City is in receipt of Two Hundred and Sixty Five Thousand Dollars (\$265,000.00) from Trio and One Hundred and Sixty Five Thousand Dollars (\$165,000.00) from FFS consistent with the Settlement Agreement entered into between the City, Trio and FFS.

4. **Binding Effect:** The undersigned represent that they have been empowered by the respective Parties to enter into, on behalf of the Parties, and to bind the Parties to the commitments and undertakings contained herein. The provisions, conditions, terms, and covenants contained herein shall be of a binding effect. The benefits and advantages hereof shall inure to the respective Parties, and the respective successors, assigns, trustees, receivers, and personal representatives of the Parties hereto.
5. **Full Disclosure:** The Parties acknowledge and agree that each is releasing certain rights and assuming certain duties and obligations which, but for this Mutual Release, would not have been released or assumed. Accordingly, the Parties agree that this Mutual Release is fully and adequately supported by consideration and is fair and reasonable, that the Parties have had the opportunity to consult with and have in fact consulted with such experts of their choice as they may have desired, and that they have had the opportunity to discuss this matter with counsel of their choice.
6. **Governing Law and Venue:** The Parties acknowledge and agree that this Mutual Release shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Mutual Release and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida, the venue situs. **To encourage prompt and equitable resolution of any litigation that may arise hereunder, each Party hereby waives any rights it may have to a trial by jury of any such litigation.**
7. **Severability:** The Parties acknowledge and agree that if any part, term or provision of this Mutual Release is determined by a court of competent jurisdiction to be invalid, illegal, or in conflict with any law of Florida, such provision shall be severed from the Mutual Release and the validity of the remaining portions or provisions shall not be affected thereby.
8. **Merger:** This Mutual Release incorporates, includes, and supersedes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to

the matters contained herein; and the Parties agree that there are no commitments, agreements or understandings concerning the Incident that are not contained in this written document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

9. **Joint Preparation:** The Parties acknowledge that they have sought (or have had the opportunity to seek) and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and acknowledge that the preparation of this Mutual Release has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other.
10. **Counterparts:** This Mutual Release may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.
11. **Captions:** The captions of the sections of this Mutual Release are for convenient reference only and shall not affect the construction nor interpretation of any of the terms and provisions set forth herein.
12. **Further Assurance:** The Parties shall execute all such further instruments, and agree to take all such further actions, that may be reasonably required by any party to fully effectuate the terms and provisions of this Mutual Release and the transactions contemplated herein.
13. **Modification:** No change or modification of this Mutual Release shall be valid unless in writing and signed by all Parties hereto. No waiver of any of the provisions of this Mutual Release shall be valid unless in writing and signed by the party against whom it is sought to be enforced.
14. **Survival of Provisions:** All covenants, warranties, and representations contained in this Mutual Release shall survive the termination of the Mutual Release.
15. **Third-Party Beneficiaries:** The Parties do not intend to directly or substantially benefit a third-party by entering into this Mutual Release. Therefore, the Parties agree that there are no third-party beneficiaries to this Mutual Release.

[This space is intentionally left blank.]

**MUTUAL RELEASE BETWEEN BROWARD COUNTY
AND CITY OF LIGHTHOUSE POINT**

CITY

Attest:

City of Lighthouse Point

Signature

By: _____
Authorized Signor

Print Name of City Clerk

Print Name and Title

_____ day of _____, 20____